

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES )  
FOR THE STATE OF OKLAHOMA, )  
Plaintiff, )  
vs. ) No. 4:05-CV-00329-TCK-SAJ  
TYSON FOODS, INC., et al, )  
Defendants. )

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THE VIDEOTAPED DEPOSITION OF ED  
FITE, produced as a witness on behalf of the  
Defendants, in the above styled and numbered cause,  
taken on the 6th day of April 2009, in the City of  
Tulsa, County of Tulsa, State of Oklahoma, before me,  
Marlene Percefull, Certified Shorthand Reporter, duly  
certified under and by virtue of the laws of the State  
of Oklahoma.

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918-587-2878

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1 MR. ELROD: I might be interested in it, \$75 11:40AM  
2 in perpetuity.

3 A No, it didn't work that way. The agreement was in  
4 perpetuity.

5 Q I want to talk about fencing cattle for a moment. 11:40AM  
6 You went through an exercise with Mr. Elrod where you  
7 went up the main stem of the Illinois River and to some  
8 extent Barren Fork and identified properties that  
9 either did or did not have cattle fenced out of them,  
10 do you recall that? 11:40AM

11 A Mm-hmm.

12 Q Have you conducted, Mr. Fite, any sort of  
13 scientific or statistical survey beyond the main stem  
14 of those two rivers as to assistant to the extent the  
15 which cattle are fenced out of tributaries that feed 11:40AM  
16 into either of those two rivers?

17 A Via windshield observation, not a scientific  
18 study.

19 Q Just your impression in driving through the  
20 watershed, is that what you mean by windshield? 11:41AM

21 A Yes, it's hit and miss.

22 Q All right. So you've not undertaken an actual  
23 inventory in the watershed, especially in the areas  
24 beyond those two main rivers, as to the percentage of  
25 properties that have cattle fenced in out of the 11:41AM

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1 stream, is that right? 11:41AM

2 A I'm going to answer your question a different way.

3 1992 -- '91, '92 is when the focus on non-point source

4 pollutants really became evident in the Illinois River

5 basin. Up to that point, it had been point source. 11:41AM

6 Okay. 1992, John Hassle, who was the director of water

7 quality with the Conservation Commission, tried to

8 identify a farm or a ranch along the west side of the

9 Illinois River in Cherokee County where riparian

10 fencing could be established. Off spring watering 11:42AM

11 source. Most landowners were approached and I ended up

12 building a mile and two tenths of fence in my fields to

13 effectively fence cattle from the river and to provide

14 a switchback grazing system. And from that point

15 forward is where the education has started, so it's not 11:42AM

16 per se a study, it's just I believe that I was one of

17 the first in. And my farm and a number of others had

18 been used to show the success of what riparian fencing

19 can accomplish and we are just now beginning to see the

20 shirttail signs of that success. 11:42AM

21 Q You're familiar with the concept called stream

22 orders?

23 A Yes.

24 Q Okay. And what order stream is the Illinois River

25 itself? 11:43AM

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1 A Be a third order. Mississippi one, Arkansas two. 11:43AM  
2 Illinois three.

3 Q And Barren Fork?

4 A Barren Fork would be a four.

5 Q Now, there are a whole series of streams and 11:43AM  
6 creeks that feed into both the Illinois River and  
7 Barren Fork, do you agree?

8 A Yes.

9 Q And what would be the range of order, if you will,  
10 situated with that tributary system? 11:43AM

11 A Well, is whether you use HUD numbers or so forth  
12 but I try to keep it just as elementary as I can.

13 Q Go with your terminology.

14 A Well, a tributary like Peacheater would be a five.

15 Q Okay. 11:43AM

16 A Tanner Creek would be a five.

17 Q What order would, if it had one, would an  
18 intermittent stream that flows through somebody's  
19 property only when it rains be?

20 A Well, if it was intermittent running into the 11:44AM  
21 Tyner, it would be a six. Or if it was an intermittent  
22 that ran into the intermittent, it would be a seven.

23 Q Okay. Now, let's think about cattle fencing with  
24 that broader perspective of all of those, you know,  
25 third and higher order streams, okay? 11:44AM

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1 A (Nods head.)

11:44AM

2 Q Mr. Fite, have you done sufficient work in the  
3 watershed to where you would feel comfortable offering  
4 an opinion to a reasonable degree of certainty as to  
5 the percentage of cattle that are fenced out of that  
6 larger stream that -- in the watershed?

11:44AM

7 A No.

8 Q Has anyone asked you to provide an estimate as to  
9 the percent of cattle in that larger stream that were  
10 -- that were fenced out of stream for use in this  
11 lawsuit?

11:44AM

12 A No.

13 Q Let's look at a few documents, then I'm going to  
14 ask you to help me understand. First one I'll hand you  
15 is Exhibit 1, which for the record is an Attorney  
16 General's opinion issued in 1998 by, I believe, Miles  
17 Tolbert, in response to a question submitted by  
18 yourself and Bryan Griffin. Do you recognize this  
19 document I've marked as Exhibit 1?

11:45AM

20 A Yes, during my participation on the animal waste  
21 task force with Governor Keating, I raised this  
22 question and provided this to the Secretary of  
23 Environment then, Bryan Griffin, and asked him for an  
24 Attorney General's opinion.

11:45AM

25 Q And in simple terms because it's a lengthy

11:46AM

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